IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2839 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NAROTTAM LAVJI RAKHASIA PORT COLONY NO 1

Appearance:

Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for the petitioner.

MR MA KHARADI for Respondent

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 10/01/2002

ORAL JUDGEMENT

The State of Gujarat, through the Deputy Commissioner of Fisheries has challenged the judgement and award of the Labour Court, Junagadh in Reference

(LCR) No.1267 of 1988 whereby the learned Judge by his order dated 30.11.1994 has partly allowed the reference of the workman and held that the action of the Department in terminating the services of the workman by oral order dated 28.12.1987 is illegal and therefore quashed. The learned Judge awarded reinstatement with continuity of service with 30% back wages and cost of Rs.250/-.

2. The facts of the case are that the respondent workman presented the demand by exhibit 6 in which he has stated that since 14.10.1985 at the monthly rate of Rs.670/-, he was discharging his duties as Plumber-cum-Electrician; without reasonable cause and without notice, by oral order dated 28.12.1987 the workman was terminated from service; that a new person is appointed in his place; that the authorities have not paid him any notice pay or any other amount towards retrenchment compensation, etc.; and that they have not held any legal proceedings against him. Therefore, the action of the authorities of terminating the services be held illegal and he should be reinstated in service with back wages for the intervening period.

3. The Department filed its written statement by exhibit 28 in which it was stated that the workman was engaged on temporary basis and that in the Department there is no post of Electrician-cum-Plumber and that the workman is not entitled to any relief.

4. The learned Judge considering the rival contentions of both the sides came to the conclusion that the defence put forward by the authorities that the workman has abandoned the service of his own, cannot be accepted only because the Department has not written any letter to the respondent workman and has not produced any evidence to that effect. Not only that they have not served any charge sheet to the workman for his absence and they have not held any departmental inquiry before terminating the service of the workman. Therefore, the defence of the authorities to the effect that the workman has stopped coming to work of his own cannot be accepted.

5. The learned Judge has also taken into consideration the fact that the workman had put in 259 days of service and that the authorities have not followed the procedure prescribed under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Therefore, there is violation of the provisions of section 25F of the Act and termination of the services of the respondent workman is illegal. The Labour Court also referred to the judgement of the Apex

Court reported in I-CLR 1988 page 175 wherein according to the learned Judge the Honourable Apex Court has held that if the workman renders 240 days of service, the provisions of sec.25F of the Act are to be complied with and without complying with the said provisions the services of the workman cannot be terminated.

6. Learned Assistant Government Pleader Shri R.V. Desai submitted that the learned Judge has erred in not accepting the defence of the Department to the effect that there is no post of Electrician-cum- Plumber and that the respondent workman of his own had abandoned the services. As he was appointed on temporary basis and was a daily wager there was no question of holding any departmental inquiry against him. Therefore, the judgement of the Labour Court is required to be quashed and set aside.

7. The learned Assistant Government Pleader relied upon the decision of the Apex Court in the matter between State of Himachal Pradesh v. Suresh Kumar Verma and another reported in AIR 1996 SC 1565. The learned advocate invited attention of the Court to para 3 of the said judgement, which reads as under:

> "3. It is seen that the project in which the respondents were engaged had come to an end and that therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the rules."

Learned Assistant Government Pleader also submitted that the present respondent himself had abandoned the work and had stopped coming to work since 27.12.1985, therefore, the department cannot be held guilty of having terminated the services of the respondent workman by oral order and that too in violation of the provisions of section 25F of the Act.

8. Learned Assistant Government Pleader also submitted that the Apex Court in the matter between the State of Uttar Pradesh and others v. Ajay Kumar, reported in (1997) 4 SCC 88 was considering as to whether the daily wagers are entitled to regularisation and as to whether the High Court's order to regularise such an employee as and when vacancy arises and to continue him till then is proper or not. Learned Assistant Government

Pleader submitted that the Apex Court has held that the daily wager is not entitled to regularisation and that the High Court's order to regularise such employee as and when vacancy arises and to continue him till then held to be illegal. He invited attention of the Court to para 3, which reads as under:

> "3. The admitted position is that the respondent came to be appointed on daily wage basis on 14.2.1985 as Class IV employee, Nursing Orderly, in the Medical College by the Medical Superintendent. When the respondent filed a writ petition in the High Court for his regularisation, the learned Single Judge pointed out that the respondent has not brought to the notice of the Court, any statutory rule under which the respondent could be regularised, on the basis of the service rendered by him as a daily wager earner. Even the method of recruitment adopted by the Superintendent was not proper inasmuch as he did not call for applications. The Division Bench reversed the decision of the learned Single Judge and had given directions. It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under the circumstances, the Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then. The direction in the backdrop of the above facts is, obviously, illegal."

9. In view of the aforesaid discussion, the present petition is allowed. The judgement and award of the Labour Court is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(Ravi R. Tripathi, J.)

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